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6 UNITED STATES DISTRICT COURT

7
8 EASTERN DISTRICT OF WASHINGTON

9 KEVIN WOLFF,

10 Plaintiff,

11 v.

12 DAVID EVANS & ASSOCIATES,
13 INC.,

14 Defendant.

No. 2:17-cv-00025-TOR

STIPULATED PROTECTIVE
ORDER

15 1. PURPOSES AND LIMITATIONS

16 Discovery in this action is likely to involve production of confidential,
17 proprietary, or private information for which special protection may be warranted.

18 Accordingly, the parties hereby stipulate to and petition the court to enter the
19 following Stipulated Protective Order. The parties acknowledge that this
20 agreement does not confer blanket protection on all disclosures or responses to
21 discovery, the protection it affords from public disclosure and use extends only to
22 the limited information or items that are entitled to confidential treatment under the
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1 applicable legal principles, and it does not presumptively entitle parties to file
2 confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL
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5 “Confidential” material shall include the following documents and tangible
6 things produced or otherwise exchanged:

- 7 1. DEA’s contract documents;
- 8
- 9 2. DEA’s personnel and salary records;
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- 11 3. information protected from disclosure by statute or other legal
12 obligations;
- 13 4. trade secrets of a party or non-party;
- 14 5. non-public financial or other sensitive commercial information,
15 including but not limited to business or strategic plans and internal
16 cost, budget, productivity, and revenue tracking reporting information;
17 and
18
- 19 6. any other sensitive, confidential, proprietary, trade secret documents
20 or information that may be target of discovery in this action.
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22 3. SCOPE
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24 The protections conferred by this agreement cover not only confidential
25 material (as defined above), but also (1) any information copied or extracted from
26 confidential material; (2) all copies, excerpts, summaries, or compilations of

1 confidential material; and (3) any testimony, conversations, or presentations by
2 parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover
4 information that is in the public domain or becomes part of the public domain
5 through trial or otherwise.
6

7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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9 4.1 Basic Principles. Confidential information may be used only for
10 purposes of litigation. Confidential material may be disclosed only to the
11 categories of persons and under the conditions described in this agreement.
12 Confidential material must be stored and maintained by a receiving party at a
13 location and in a secure manner that ensures that access is limited to the persons
14 authorized under this agreement.
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17 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the designating party, a
19 receiving party may disclose any confidential material only to:
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21 (a) the receiving party’s counsel of record in this action, as well as
22 employees of counsel to whom it is reasonably necessary to disclose the
23 information for this litigation;
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1 (b) the officers, directors, and employees (including in house
2 counsel) of the receiving party to whom disclosure is reasonably necessary for this
3 litigation;

4 (c) experts and consultants to whom disclosure is reasonably
5 necessary for this litigation who agree to treat confidential material as confidential
6 under this agreement;

7 (d) the court, court personnel, and court reporters and their staff;

8 (e) copy or imaging services retained by counsel to assist in the
9 duplication of confidential material, provided that counsel for the party retaining
10 the copy or imaging service instructs the service not to disclose any confidential
11 material to third parties and to immediately return all originals and copies of any
12 confidential material;

13 (f) during their depositions, witnesses in the action to whom
14 disclosure is reasonably necessary and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
16 party or ordered by the court. Pages of transcribed deposition testimony or
17 exhibits to depositions that reveal confidential material must be separately bound
18 by the court reporter and may not be disclosed to anyone except as permitted under
19 this agreement;

1 (g) the author or recipient of a document containing the
2 information or a custodian or other person who otherwise possessed or knew the
3 information.
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5 Notwithstanding this provision, nothing in this agreement prevents the
6 parties from attempting to use documents obtained in this litigation in other
7 litigation involving the same parties and the attorneys may provide the documents
8 to their co-counsel in such litigation.
9

10 4.3 Filing Confidential Material. Before filing confidential material or
11 discussing or referencing such material in court filings, the filing party shall confer
12 with the designating party to determine whether the designating party will remove
13 the confidential designation, whether the document can be redacted, or whether a
14 motion to seal or stipulation and proposed order is warranted.
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17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.
19 Each party or non-party that designates information or items for protection under
20 this agreement must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The designating party must designate for
22 protection only those parts of material, documents, items, or oral or written
23 communications that qualify, so that other portions of the material, documents,
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1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
6 to impose unnecessary expenses and burdens on other parties) expose the
7 designating party to sanctions.
8

9
10 If it comes to a designating party's attention that information or items that it
11 designated for protection do not qualify for protection, the designating party must
12 promptly notify all other parties that it is withdrawing the mistaken designation.
13

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
16 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
17 protection under this agreement must be clearly so designated before or when the
18 material is disclosed or produced.
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20
21 (a) Information in documentary form: (*e.g.*, paper or electronic
22 documents and deposition exhibits, but excluding transcripts of depositions or
23 other pretrial or trial proceedings), the designating party must affix the word
24 "CONFIDENTIAL" to each page that contains confidential material. If only a
25 portion or portions of the material on a page qualifies for protection, the producing
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1 party also must clearly identify the protected portion(s) (*e.g.*, by making
2 appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings:
4 the parties and any participating non-parties must identify on the record, during the
5 deposition or other pretrial proceeding, all protected testimony, without prejudice
6 to their right to so designate other testimony after reviewing the transcript. Any
7 party or non-party may, within fifteen days after receiving the transcript of the
8 deposition or other pretrial proceeding, designate portions of the transcript, or
9 exhibits thereto, as confidential. If a party or non-party desires to protect
10 confidential information at trial, the issue should be addressed during the pre-trial
11 conference.
12

13 (c) Other tangible items: the producing party must affix in a
14 prominent place on the exterior of the container or containers in which the
15 information or item is stored the word “CONFIDENTIAL.” If only a portion or
16 portions of the information or item warrant protection, the producing party, to the
17 extent practicable, shall identify the protected portion(s).
18

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items does not, standing alone, waive
21 the designating party’s right to secure protection under this agreement for such
22 material. Upon timely correction of a designation, the receiving party must make
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1 reasonable efforts to ensure that the material is treated in accordance with the
2 provisions of this agreement.

3 Notwithstanding this provision, once information or data is admitted into
4 evidence at trial, it loses its confidential designation. Where appropriate parties
5 will seek to file confidential documents under seal.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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9 6.1 Timing of Challenges. Any party or non-party may challenge a designation
10 of confidentiality at any time, and it is the burden of the designating party to prove
11 that the designation is valid under the Federal Rules of Civil Procedure.

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13 6.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any
15 motion regarding confidential designations or for a protective order must include a
16 certification, in the motion or in a declaration or affidavit, that the movant has
17 engaged in a good faith meet and confer conference with other affected parties in
18 an effort to resolve the dispute without court action. The certification must list the
19 date, manner, and participants to the conference. A good faith effort to confer
20 requires a face-to-face meeting or a telephone conference.

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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:
6

7 (a) promptly notify the designating party in writing and include a
8 copy of the subpoena or court order;
9

10 (b) promptly notify in writing the party who caused the subpoena
11 or order to issue in the other litigation that some or all of the material covered by
12 the subpoena or order is subject to this agreement. Such notification shall include
13 a copy of this agreement; and
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15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the designating party whose confidential material may be affected.
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18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
20 confidential material to any person or in any circumstance not authorized under
21 this agreement, the receiving party must immediately (a) notify in writing the
22 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
23 all unauthorized copies of the protected material, (c) inform the person or persons
24 to whom unauthorized disclosures were made of all the terms of this agreement,
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1 and (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL
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6 When a producing party gives notice to receiving parties that certain
7 inadvertently produced material is subject to a claim of privilege or other
8 protection, the obligations of the receiving parties are those set forth in Federal
9 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
10 whatever procedure may be established in an e-discovery order or agreement that
11 provides for production without prior privilege review. The parties agree to the
12 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
13

14 10. NON TERMINATION AND RETURN OF DOCUMENTS
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16 Within 60 days after the termination of this action, including all appeals,
17 each receiving party must return all confidential material to the producing party,
18 including all copies, extracts and summaries thereof. Alternatively, the parties
19 may agree upon appropriate methods of destruction.
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21 Notwithstanding this provision, counsel to whom confidential documents
22 have been provided have the right to keep one copy of the documents after the end
23 of the case.
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1 The confidentiality obligations imposed by this agreement shall remain in
2 effect until a designating party agrees otherwise in writing or a court orders
3 otherwise.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: June 7, 2017

/s/ Thomas G. Jarrard

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8 1020 N Washington Street
9 Spokane, WA 99201
10 Telephone: (425) 239-7290
11 TJarrard@att.net

12 Attorneys for Plaintiff

13 DATED: June 7, 2017

/s/Christopher T. Wall

14 Victor J. Kisch, WSBA No. 38699
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22 Email: karin.jones@stoel.com
23 Email: christopher.wall@stoel.com

24 Attorneys for Defendant
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
3 production of any documents in this proceeding shall not, for the purposes of this
4 proceeding or any other proceeding in any other court, constitute a waiver by the
5 producing party of any privilege applicable to those documents, including the
6 attorney-client privilege, attorney work-product protection, or any other privilege
7 or protection recognized by law.
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11 DATED: June 12, 2017
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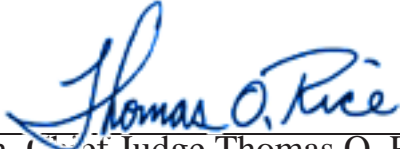
13 
14 Hon. Chief Judge Thomas O. Rice
15 United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of Washington on [date] in the case of *Kevin Wolff v. David
Evans & Associates*, U.S. District Court of Washington, Eastern District, Case No.
2:17-cv-00025-TOR. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of contempt.
I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

Date: _____

City and State where sworn and signed: _____

1 Printed name: _____

2 Signature: _____

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2017, I caused the forgoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Thomas G. Jarrard
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